RAILWAY INFLUENCE IN THE LAND OFFICE.

In the early days of the anti-slavery struggle, Harriet Martineau predicted its speedy triumph, and that "other sorts of freedom besides emancipation from slavery would come with it." She believed "that with every black slave a white would also be freed," and that "the aristocratic spirit, in all its manifestations, would be purged out of the community." These inspiring prophecies have not been fulfilled. Slavery, indeed, has been abolished, at least so far as legislation could take away the power of the master; but the freedmen have not yet been emancipated from the thralldom imposed by property and intelligence upon the helplessness of poverty and ignorance. The spirit of aristocracy has not been "purged out of the community" in either section of the Union, but has simply taken refuge in other forms, and is still putting forth the full measure of its evil power. While the chattel slavery of the Southern negro is at an end, the animating principle of the old slave-masters still finds manifold expression. It reveals itself in industrial servitude, which borrows its life from the alliance of concentrated capital with labor-saving machinery. Its maxim is, that the chief end of government is the protection of property, which is easily translated into the kindred maxim, that capital should own labor. Its tap-root is pure cupidity, and, if left to itself, it degenerates into a system of organized rapacity, with conscience and humanity turned adrift. Commercial feudalism is another form of aristocratic rule. It wields its power through the machinery of great corporations, which are practically endowed with life-offices and the right of hereditary succession. They control the makers and expounders of our laws, and are steadily advancing along their chosen line of march toward absolute supremacy. The system of agricultural serfdom, which we call land monopoly, is not less hostile to the life of free insti-

tutions. It has recently added to its triumphs in the purchase by foreign monopolists of millions of acres of land, which should long since have been devoted by law to actual settlement and tillage; while its power is constantly on the increase through the multiplication of great estates. When we add to these fearful forms of slavery the startling debasement of our politics through the corrupt use of money, which thus foreshadows the political serfdom of the people, we cannot fail to see that the realization of Miss Martineau's dream of a democratic millennium must be postponed to some indefinite time in the distant future, and that it can only become possible by the ceaseless vigilance of the people.

These general observations will serve as an introduction to the special subject of this paper, namely, The power of our great railway corporations over the government which created them and prodigally endowed them with its lands. The policy of stimulating the construction of railways by grants of the public domain had its beginning in 1850, in the grant then made in aid of the Illinois Central Railway. The act gave "every alternate section of land designated by even numbers, for six sections in width on each side of said road and branches"; and it provides that, "in case it shall appear that the United States have, when the line of said road and branches is definitely fixed by the authority aforesaid, sold any part of any section hereby granted, or that the right of preëmption has attached to the same, then it shall be lawful for any agent or agents appointed by the governor of said State, to select, subject to the approval aforesaid, from the lands of the United States most contiguous to the tier of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold, or to which the right of preëmption has attached as aforesaid. . . . . Provided, that the lands to be so located shall in no case be further than fifteen miles from the line of the road." It was the theory of this policy that in a belt of lands thus restricted in width the reserved sections would be duplicated in value by their proximity to the road, and that, while it could work no hardship to the settler to pay a double minimum for lands thus doubled in value, the Government would lose nothing, and the fund thus raised would enable the road to be built. This act became a precedent for all subsequent land-grants for the following twelve years; and had it been

adhered to, with adequate guards against monopoly, it would have been perfectly defensible, and generally most beneficial to the public. But, in the year 1862, a radically different policy was inaugurated. Simultaneously with the passage of the Homestead Act, and, as if purposely intended to nullify its provisions, our land-grant policy put on new shapes, and entered upon its historic career of recklessness and extravagance. The grant made in aid of the Union Pacific Railroad, of July 1st, 1862, as subsequently amended, gave ten sections per mile on each side of the road, within the limit of twenty miles. The grant to the Northern Pacific Railway was of every alternate section of public land, not mineral, to the amount of twenty sections per mile on each side of its line, with the privilege of making up deficiencies within ten miles on either side of the land granted, or fifty miles from the line of the road. The grant to the California and Oregon Railroad, of July 25th, 1866, was twenty alternate sections per mile on each side of the line, with the right to make up deficiencies within ten miles of the land granted; and the same quantity was granted to the Atlantic and Pacific, by Act of July 27th, 1866; and to the Southern Pacific, by Act of the same date. The grant to the Oregon Central Railroad, of May 4th, 1870, is ten sections per mile on each side of its line, with the right to make up deficiencies within twenty-five miles. The grant to the Texas Pacific Railroad, of March 3d, 1871, is twenty alternate sections per mile on each side of the road, with the right to make up deficiencies ten miles beyond these limits; while no limits are prescribed as to a portion of the route, and the company is allowed to make up deficiencies in the State of California within twenty miles of the lands granted. In some of the rapidly multiplying grants made between 1864 and 1870, the reserved even-numbered sections were granted after the odd ones had been exhausted; while, in one instance, the grant, as construed by the Land Department, had no lateral limits, and thus was a palpable perversion of the letter and spirit of the original policy. The people at last became so thoroughly aroused, that Congress, over eleven years ago, was obliged to call a halt; but it was not till more than two hundred million acres of the people's patrimony had been appropriated—an area as large as that of the thirteen original States.

I have not referred to these facts for the purpose of dwelling upon the enormous and irreparable mischiefs of this system, but

in order to clear the way for some pertinent and practical considerations suggested by this series of legislative acts. My task is threefold. I wish to invite attention to the power of these railroad corporations over the land department of the Government, in securing the illegal apportionment of large areas of the public domain; their power over Congress, through which they have maintained the prolonged monopoly of great areas of lands after their forfeitfure for non-compliance with the express conditions on which they were granted; and their power over the Federal courts, as seen in recent adjudications involving their rights. I shall deal with these topics in their order.

The administration of land-grants is committed to the General Land Office, under the supervision of the Secretary of the Interior; and the manner in which the work has been performed for nearly the third of a century, under every administration of the Government, shows how easy it has been for the companies controlling these grants to appropriate to their own use, under the forms of law, but contrary to its letter and spirit, immense tracts of the public domain. As an illustration of what I mean, let me refer to the language already recited from the Act of 1850, making a grant to the State of Illinois, which is substantially the same as in all later acts. It grants "every alternate section of land designated by even numbers, for six sections in width on each side of said road and branches"; with the proviso that, "in case it shall appear that the United States have, when the line of said road and branches is definitely fixed by the authority aforesaid, sold any part of any section hereby granted, or that the right of preëmption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval aforesaid, from the lands of the United States most contiguous to the tier of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to such land as the United States have sold, or to which the right of preëmption has attached as aforesaid." It will be seen by this language that indemnity is only awarded where the United States, at the date of the definite location of the road, "have sold any part of any section hereby granted, or that the right of preëmption has attached to the same." In those cases other lands are given in lieu of such of the granted lands as the United States have otherwise disposed of prior to such location, and subsequent to the passage of the act.

Lands disposed of before the grant was made most certainly were not granted by it, and could not, therefore, be the subject of indemnity; but the Land Department, from the beginning, has administered every railroad grant upon the theory that the company was entitled to indemnity, as well for lands disposed of *prior* to the date of the grant, as for those disposed of between that date and the definite location of the line of the road. This construction of the law is an absurdity, and can only be accounted for by the presence and influence of the railroad companies, and the absence of any party claiming an adverse right. Their view of the law has been accepted without question; and yet, in the case of Wilcox *vs.* Jackson, 13 Peters, 498, the Supreme Court of the United States had declared, ten years before the Illinois grant was made, that, "whenever a tract of land has been once legally apropriated to any purpose, it becomes, from that moment, severed from the mass of public lands, and no subsequent law, proclamation, or sale, will be construed to embrace or operate upon it, although no reservation be made of it." But this decision was unheeded, and every administration of the Government—whether Democratic, Whig, or Republican—continued to administer every railroad grant as if it had embraced lands disposed of prior to its date, and as if indemnity were due on account of such lands.

But the claim of the railroad companies, so long acquiesced in by the Land Department, was at last settled adversely by the Supreme Court of the United States, at its October term, 1875, in the case of the Leavenworth, Lawrence and Galveston Railroad Company *vs.* the United States, 2 Otto, 733, in which the very principle in controversy was directly involved. The question presented was whether the Osage ceded lands of Kansas, which fell within the grant made by Congress to said railroad company, were included in the grant, or were reserved from its operation by the treaty which had set them apart for the Indians. Justice Davis, in pronouncing the opinion of the Court, says:

"Only the public lands owned absolutely by the United States are subject to survey and division into sections, and to these lands this grant is applicable. It embraces such as could be sold and enjoyed, and not those which Indians, pursuant to treaty stipulations, were left free to occupy. Since the land system was inaugurated, it has been the policy of the Government to sell the public lands, at a small cost, to individuals; and, for the last twenty-

five years, to grant them to States, in large tracts, to aid in various works of internal improvement. But these grants have always been recognized as attaching only to so much of the public domain as was subject to sale or other disposal, although the roads of many subsidized companies passed through Indian reservations. And such grants could be treated in no other way; for Congress cannot be supposed to have thereby intended to include land previously appropriated to another purpose, unless there be an express declaration to that effect."

In this opinion Judge Davis expressly adopts and re-affirms the language of the Court in the case of Wilcox *vs.* Jackson, already cited, as a rule of construction. In speaking of these Indian lands, he says: "They were not in a condition to be granted, and for this reason were excepted from the category of lands to be donated to a State to aid it in building railroads. And it would be strange, indeed, in a land-grant act, if Congress meant to give away property which a just and wise policy had devoted to other uses." In interpreting the words of the indemnity clause of the Act of Congress in this case, he says they "show clearly that the only purpose of that clause is to give lands outside of the ten-mile limits for those lost inside by the action of the Government in keeping the land offices open between the date of the granting act and the location of the road. This construction gives effect to every part of the act, and makes each part consistent with the other."

In the case of Newhall *vs.* Sanger, decided at the same term of the Court, 2 Otto, 761, the same principle was explicitly affirmed. This case involved the title to a quarter-section of land in California, which was claimed under a grant made by Congress to the Western Pacific Railroad Company, and contested by the claimant of the same tract as a part of a Mexican grant, which had been reserved from the operation of the Act of Congress. Justice Davis, in re-affirming the decision of the Court in the previous case, says: "The acts which govern this case are more explicit, and leave less room for construction. The words Public Lands are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws. That they were so employed in this instance is evident from the fact that to them alone could, on the location of the road, the order withdrawing lands from preëmption, private entry, and sale, apply." These decisions fairly ended all controversy; for if lands covered by Spanish grants and Indian reser-

vations cannot be granted by Congress, and so cannot become the basis of indemnification, it is equally obvious, independent of the express language of Justice Davis, above quoted, that lands already disposed of by the Government, by sale or pre-ëmption, cannot be.

But, although it is now more than seven years since these decisions were rendered, the railroads have not lost an acre of land which has been illegally awarded them as indemnity, with the single exception of the Osage Indian lands involved in the case cited, and the tract in dispute in the case of Newhall *vs.* Sanger. In his report for 1876, the Commissioner of the General Land Office stated that suits were to be instituted to vacate the patents illegally issued to railroad companies, and that lists of the lands covered by them were in course of preparation. In his report for 1877, he says that little progress had been made in their preparation, but that data for use in the suits to be instituted were being prepared. In his report for 1878, he referred to the necessity for re-adjusting railroad grants under the decisions of the Supreme Court, and said the work had been delayed by the smallness of his clerical force. In his report for 1879, he stated that suit had been instituted against the Western Pacific Railroad Company by the direction of the Attorney-General, and that lists of the lands erroneously patented, prior to the ruling of the Supreme Court in the case of Newhall *vs.* Sanger, were being prepared as the basis of suits to vacate such patents. But as all these patents were void, they could convey no title, and had no legal effect whatever. There was nothing on which a court could act. It could only decide that the junior patent conveyed the title, the earlier patent being void. It could declare that if the lands covered by any of those patents were, at the date of the withdrawal of lands for the railroad, of the same status as the land claimed by Sanger at the date of its withdrawal for the Western Pacific Railroad Company, they were void for the reason stated by the Court in his case; but this was a question coming exclusively within the jurisdiction of the department having control of it. It is not necessary that every case should be passed upon by the Court, for, when a principle is fully established in one case, the department must follow it until modified or set aside. To send every patent into court would, doubtless, have suited the railroad companies; but what was wanted was the restoration to settlement of all the lands erroneously pat-

ented, and their disposal under the Preëmption and Homestead laws.

There was, therefore, no serious difficulty in the way of a proper re-adjustment of titles, made necessary by the decisions in the cases cited, if the Land Department had really desired it. Very unfortunately for the rights of settlers, it was the servant of the railways, and singularly fertile in expedients for guarding their interests. Soon after the decision of the case of Newhall *vs.* Sanger, the Acting Secretary of the Interior overruled the practice which had prevailed in the department since the year 1848, as to issuing second patents in lieu of void ones previously issued. He admitted that this practice had the sanction of the Supreme Court of the United States, but he refused to be governed by it, and held that although in the case of Newhall *vs.* Sanger the patent was declared void, yet, in the case of other lands within the limits of the same grant, the patents were voidable only, and not void, till declared so judicially. How completely the department thus became the ally of great corporations and the enemy of the people will more fully appear as I proceed.

Another advantage gained by the railroads had its origin in an opinion given by Attorney-General Black, in the year 1857, when the railroad companies were anxious to obtain certified lists of their lands before they had been earned. Mr. Black held that these lists were simply in the nature of information from the records of the department, and that he could see no objection to issuing them to any person who desired to make a proper use of them, just as any other information would be furnished from the records; and that they could have no influence on the title to the lands. Under this opinion, the department issued the certified lists as requested; but in May, 1880, the Secretary of the Interior decided that when any of his predecessors have certified lands under railroad grants, their acts are final and conclusive, and binding upon him as their successor. He further held that a complete legal title was conveyed by such certified lists, and that the latter were in all respects equivalent to patents. This cut short the work of re-adjustment as to these lands, and left the railroad companies with nothing to fear from the department. They escaped with their plunder; and if we take into account only the companies whose grants have been earned by an honest compliance with their conditions, it may be safely stated that

they have had awarded to them an illegal excess of indemnity lands amounting to more than ten million acres, or enough to make sixty-two thousand five hundred farms of one hundred and sixty acres each. All these lands should have been opened to settlers at the government price, instead of becoming the spoil of corporate monopolies, and sold at rates imposed by themselves.

In this connection, it may be proper to refer to a kindred illustration of the readiness of the Land Department to do the bidding of these corporations. I allude to a ruling of Secretary Delano, in May, 1875, in the case of the Western Pacific Railroad Company *vs.* H. E. Dillingham *et al.*, in which he overruled the previous practice of the department, and held that land within the claimed limits of a Mexican grant, but subsequently excluded from the confirmed limits, or released from reservation by the rejection of the grant claim, was not reserved from a railroad grant made while the Mexican grant claim was *sub judice.* As there are in the State of California nearly six hundred Mexican grants, each including from one to eleven leagues of land, and aggregating within their exterior limits many million acres, it is readily seen that very large areas would fall within the limits of the different railroad grants intersecting that State, and that the question as to whether they were excluded from them or would inure to their benefit on becoming released from reservation, was one in which the railroad companies of California were deeply interested. This ruling of Secretary Delano was made about a year before the decision of the case of Newhall *vs.* Sanger, which showed it to be unauthorized, and made with the knowledge that the point involved in his action was then before the Supreme Court. But he was faithful to his employers, and prosecuted his work with such dispatch that before the decision was announced many thousands of acres were patented to the California railroads; and having the patents, and the possession of the lands covered by them, they are now in the same condition as the companies that obtained the illegal excess of indemnity under the ruling of the Secretary of the Interior in 1880, already referred to. After the lapse of seven years they are still holding on to their booty, save as to the particular tract involved in the case of Newhall *vs.* Sanger. After the decision in that case, the Commissioner of the General Land Office suspended, or pretended to suspend, the practice of awarding such lands to the California roads; and in his annual

report for 1879, as already shown, he stated that suit had been instituted against the Western Pacific Railroad Company by the direction of the Attorney-General. But it turned out that, on the motion of the railroad company, this suit was dismissed, because the purchasers from the company had not been made parties. No other suit has been instituted to set aside any of the numerous patents illegally issued for lands embraced within the exterior limits of this or any other Mexican grant holding the same *status* as the land in the case of Newhall *vs.* Sanger. These "voidable" patents can thus only be set aside by judicial proceedings, while such proceedings have been abandoned by the Government, after all its pretended preparation, leaving the railroads the masters of the situation, through the game of fast-and-loose which has been played for their benefit.

But they were still exposed to possible danger under the adjudications referred to, and naturally felt the need of some further security. This they found in an opinion of Attorney-General Devens, dated June 5th, 1880, and asked for by Secretary Schurz, as "an authoritative expression of his views." Although the distinguished secretary is not a lawyer, he is uncommonly skilled in the use of English words and perfectly familiar with their import, and it seems a little remarkable, therefore, that he should have found it necessary to ask for this legal advice, in view of the clear and unmistakable language of three decisions of the Supreme Court of the United States on the very question now submitted, with others, for interpretation. But the opinion of the Attorney-General is still more remarkable than the request of the Secretary, and cannot fail to surprise every member of the legal profession who may chance to read it. He finds no difficulty in disposing of the decisions of the Supreme Court. Quoting the words of Mr. Justice Davis, in the case of The Leavenworth, Lawrence, and Galveston Railroad Company *vs.* The United States, in which he declared that indemnity could only be allowed for lands within indemnity limits "lost by the action of the Government between the date of the grant and the location of the road," he says that this "is a dictum entitled only to the weight which is given to the dicta of eminent judges." He then refers to an unreported opinion of Mr. Justice Harlan, in the case of the Madison and Portage Railroad Company *vs.* The Treasurer of the State of Wisconsin, in the Circuit Court of the United States for the Western District of that State, in which it

is stated that "deficiencies in place limits, caused by sales or preëmptions previous to the location of the route, whether before or after the passage of the act, may be supplied from the indemnity limits." But the principle thus affirmed was not involved in this case, except as a side-issue. Several points were decided; and the opinion, which I have before me, is of considerable length. The language quoted occurs in the latter portion of it, where the Court was considering the question whether "The Wisconsin Railroad Farm Mortgage Land Company," as the successor of "The La Crosse and Milwaukee Railroad Company," was entitled to lands under the grant made by Congress, June 3, 1856, or under that of May 5, 1864. The Court held that the right of the said "Farm Mortgage Land Company" was under the former grant. The proper interpretation of the indemnity clause of the Act of 1856 was not before the Court, and the statement of Justice Harlan, which I find written on the margin of the printed opinion, is, therefore, a mere "dictum." The opinion, moreover, discloses that the case was to be appealed to the Supreme Court of the United States for final adjudication; but the Attorney-General says, "in view of these conflicting opinions, it would seem to me that the safer course for the department would be to return to its original construction"; and the department promptly acted upon this advice, and still continues to stand by the railroad companies in their work of plundering the people through the forms of law. The Attorney-General does not discuss the question decided by the Supreme Court. He takes no notice of the clearly expressed and impregnable principles on which Justice Davis bases his opinion, merely referring to a brief passage, which he called "a dictum," while himself appealing to the mere "dictum" of an inferior tribunal, in a case which was to be appealed to a higher court. The Secretary, more than keeping pace with the Attorney-General, not only accepted this opinion as better authority than that of the Supreme Court,—although it was merely advisory,—but added the words "otherwise disposed of" to the specifications of prior losses for which the Attorney-General declared indemnity might be allowed—thus greatly enlarging the scope of the opinion. The mischiefs of this shameful prostitution of the Land Department can be more fully appreciated by remembering that it imposes upon the settlers who purchase these indemnity lands a tariff of at least a hundred million dol-

lars more than they would cost at the Government price, and that this sum is drawn from their pockets without any warrant of law, for the benefit of the ravenous monopolies that exact it; while, if the rule of the Supreme Court were followed, a large majority of railroad and other grants could at once be closed up, the remaining lands restored to settlement, and the titles to any unsold lands heretofore improvidently conveyed in excess of their legal grants, recovered by the United States.

But the most remarkable fact remains to be stated. The Land Department, having procured the opinion of the Attorney-General justifying this wholesale plunder of the public domain, is still not satisfied. The opinion, it should be remembered, follows the decisions of the Supreme Court as to the specific case of reserved lands. It admits that for them no indemnity can be allowed. But the department disregards this opinion in the interest of the railroads when it becomes an obstacle to their purposes. I understand that the Atchison, Topeka and Santa Fé road has been allowed an illegal excess of indemnity for lands reserved at the date of its grant, amounting to about eight hundred thousand acres, according to the principle affirmed in the case of The Leavenworth, Lawrence and Galveston Railroad *vs.* The United States. Of this excess more than four hundred thousand acres have been awarded contrary to the opinion of the Attorney-General, and since it was given. This road had received four hundred and eighty thousand seven hundred and seventy-seven acres of land before the decision in the case referred to was rendered, having before received two million two hundred and seventy-four thousand six hundred and eighty-six acres; and a large additional allowance, it is understood, will soon be made, notwithstanding previous illegal excesses carelessly awarded before the department required the company to designate the tracts in lieu of which it claimed indemnity. The Kansas Pacific and the Missouri, Kansas and Texas Railroad companies, in Kansas, have each received an illegal excess of more than one hundred thousand acres, by treating land reserved at the date of the grant as the subject of indemnity, while the aggregate of lands thus illegally held by Kansas railroads would probably much exceed a million acres. This amount is increasing from year to year as the work of adjustment proceeds, and very little attention seems to be paid to the decisions of the Supreme Court or the opinion of the Attorney-General, when

either stands in the way of the roads. Of course, no effort is being made to restore these lands to the United States; and nothing but an act of Congress, imperatively requiring a re-adjustment in the case of each grant, will meet the difficulty.

I pass to other facts equally significant and startling. All acts of Congress, making grants of land for railroad or other purposes, within the mineral regions of the country, expressly reserve mineral lands, which are held for disposal exclusively under the laws making provision therefor. When the character of the lands so reserved is controverted, the question is usually adjudicated on the application of the railroad companies, whose vigilance and influence give them a decided advantage; and if the land is adjudged to be non-mineral, the railroads take it, notwithstanding the fact that it was expressly reserved from the operation of the grant, and was subject to homestead and preëmption settlement the moment the adjudication was made. This has been done in the case of the Central Pacific and other great roads passing through the mineral districts, and it is as open a defiance of law and as flagrant a wrong to actual settlers as the appropriation of Mexican grants and Indian reservations already referred to, or the award of indemnity for lands never granted. The claims of the railroad companies are always recognized by the Government as paramount, while the settlement of the public domain and the legal rights of the citizen seem to be regarded as matters of little moment. The Land Department adopts the principle that a railroad grant is an adverse claim to lands excepted from it, and in behalf of the company construes the exception strictly and the grant liberally. Settlement claims are strangely treated as contests, and the settler is required especially to notify the railroad company of his application to enter or make proof, just as if it were the owner of the public domain. Notice by publication is not sufficient notice to a railroad. If the company does not appear, or does not desire to contest, it makes no difference. It is regarded as a contest in any event, and the settler must run the gauntlet of the special rules governing contests, which have been devised in the particular interest of the company, instead of allowing him the unhindered assertion of his rights under the laws of the United States, and requiring the company to make out its claim affirmatively under its grant. Every presumption is against him, and no mistakes are ever made in his favor. The rule is

different in cases involving the title to school lands, for there no great corporation is interested.

The same principle is applied to the large class of cases where settlements have been made on lands within the limits of a grant prior to the date of the granting act, and are subsequently abandoned. The lands in such cases become public lands, and are open to settlement by other parties, because they were reserved from the grant and have reverted to the Government. But in nearly all such cases the railroad companies appropriate them, and the perfectly unquestionable rights of the settlers are denied. The law is openly defied, and thousands of settlers have thus lost their lands and improvements. The same rule is applied under the Amended Homestead Act of 1864, permitting soldiers in actual service to make their affidavits of intention to claim the land selected by them before a commanding officer. Great numbers of soldiers availed themselves of this privilege, hoping to secure a home for their families after the termination of their service. But they did not always return, and their families, in some instances, could not move on to the land. For these and kindred reasons, the law could not always be complied with, and the entries were canceled. Such entries, however, while existing on the records, reserved the land under the general rules of law applicable in such cases. But, in the year 1879, the department ruled in one of these cases that the soldier's entry was *primâ facie* invalid in its inception, and therefore that it did not operate to except the land from a railroad grant. All the lands covered by these entries had been reëntered by others after the previous entries had been canceled. For fifteen years, settlers had been taught by practice and precedent to believe that second entries, made after the cancellation of the first, would be respected. They did not know that railroad companies had rights that were denied to the citizens, but they were undeceived by this decision; and those to whom it applied lose their improved farms, which go to the railroads, while its application has been made to govern a much larger class of cases than that of the precise one decided. In cases that have arisen since this decision was rendered, the Land Department has volunteered to order hearings for the benefit of the railroad companies, and has required the present settler to prove, affirmatively, the validity of the former entry. In these and kindred cases, however, the rulings of the department have not been uniform. Quite

recently, as I learn, they have been more favorable to settlers; but they have very generally been against them.

The conduct of the department in the illegal withdrawal of railroad lands is of the same remarkable character. Until the numbers of the sections to be withdrawn are known by the survey, and the map thereof showing such sections is received at the local land office and marked upon the record, and notice thus given to the world of the appropriation, the withdrawal of the land is not operative, and the lands may be entered by any legal applicant. Settlers on them, prior to such legal withdrawal, are expressly protected by law. But this law is set aside by the department, and many thousands of settlers have thus been robbed of their homes. Formerly, all lands within railroad limits were withdrawn as soon as the granting acts were passed, and before anything had been done to attach the grant. This was done on the assumption that the act vested the title to the lands at once, irrespective of the conditions of the grant. In some cases lands have been withdrawn before the act making the grant had passed, as in the grants in the northern peninsula of Michigan. The effect of these various withdrawals has been to award many millions of acres to the railroads before any right to them had vested, and to withhold them from settlers whose right was perfect.

But the withdrawal of lands within indemnity limits is equally unauthorized and mischievous, and still more inexcusable. This has been done in every grant. In that made to the Northern Pacific, the Southern Pacific, the Atlantic and Pacific, the Texas and Pacific, and other similar grants, the withdrawal of indemnity lands is not authorized, either expressly or by implication, but is impliedly forbidden in each case by the express provision that all other lands on the line of the roads than those granted by the act shall be open to homestead and preëmption entry. One of the distinctions between lands within the indemnity limits and those granted is the difference in price; the former being sold at a dollar and twenty-five cents, and the latter at two dollars and fifty cents per acre. But both are withdrawn for the benefit of the roads, and the right of settlement thereon denied; while, in every instance of an actual subsequent settlement, and in a majority of instances of prior actual settlement, the lands so occupied by settlers have been awarded to the railroads. The decision of the Supreme Court,

that no rights exist under railroad grants to land within indemnity limits until a selection is actually made, and the laws of Congress expressly reserving such lands, are nullified by decisions and rulings of the Land Department in the interest of the roads, while settlers are thus obliged to pay the companies two dollars and fifty cents per acre for lands not owned by them, and which should be disposed of at the minimum price. These are intolerable evils. It is estimated that more than one hundred million acres remain withdrawn from market and settlement under various acts of Congress; and of this aggregate a very large proportion has been illegally withdrawn as indemnity lands before selection, or as granted lands before the definite location of the line of the road, and could be restored to the public domain without any declaratory act of forfeiture by Congress.

The administration of railroad grants has been singularly reckless and indefensible in other respects. In many instances lands have been certified greatly in excess of the grants. Examples of this kind are to be found in the Cedar Rapids and Missouri River Railroad, which has received an excess of 98,746 acres; the Sioux City and St. Paul Railroad of Iowa, which has received an excess over the possibilities of the grant of 48,390 acres; the St. Paul and Sioux City Railroad of Minnesota, which has received an excess of 350,358 acres; and the Winona and St. Peters Railroad, which has received an excess of 238,007 acres. These examples could readily be multiplied, and the aggregate of such illegal appropriations amounts to several millions of acres. In other cases, the lands certified have been greatly in excess of those actually earned, as in the Mobile and Girard Railroad, in which all the public lands within the grant for its entire length of three hundred miles were certified, and all or nearly all those within the indemnity limits were patented, being an excess over the amount earned of 482,408 acres.

In some cases the roads for which the grant was made have never been constructed, while in others the construction has been partial. The Coosa and Chattanooga Railroad was never built. The grant expired in 1856, but all public lands in odd-numbered sections along its line, thirty miles in width, have been reserved since 1858. There is no official report of the construction of any portion of the Pensacola and Georgia Railroad, in Florida.

Its proposed length was four hundred and eight miles, and a million and a quarter acres of land were certified or patented in advance of construction,—the excess over the amount given for the construction of the road being probably a million acres. The lands granted along the whole length of the contemplated road for twelve miles in width, and eighteen miles of indemnity limits, were withdrawn, in 1857, and so remain. In the case of the St. Louis and Iron Mountain Railroad, in which the grant was made in 1866, the road has not been built, and the grant has been abandoned by the company for a different location; but the lands are still in reservation for twenty miles on each side of the line originally proposed. The grant to the North Louisiana and Texas Railroad expired in 1866. Of the entire line of one hundred and sixty miles, ninety-four are unofficially reported as constructed, and 333,211 acres of land are certified or patented in advance of construction. The Atlantic and Pacific Railroad, with 1,400 miles of unconstructed road, has, in addition to its withdrawal of a belt one hundred miles in width through the territories of New Mexico and Arizona, a withdrawal of sixty miles in width along the line of the Pacific coast in California. The Southern Pacific road has a like withdrawal overlapping the coast withdrawal for the Atlantic and Pacific road; and, although the withdrawal for one company is regarded as invalid, as against the claim of another, it is held in full force and effect as against settlers. Lands within the limits of the withdrawals for both these roads across the State of California, aggregating one hundred and twenty miles in width, though no road has been built and none is being constructed, are still in reservation. In the case of the New Orleans, Baton Rouge, and Vicksburg road, the grant expired in 1876. No road has ever been built under this grant, nor line definitely located. Its proposed length was three hundred miles, and the lands were illegally withdrawn on a preliminary line, and are still in reservation. Under the Texas and Pacific Railroad grant, no road has been constructed, nor line definitely located, but the belt of land withdrawn in 1871, from El Paso in Texas to the Pacific Ocean, being eighty miles in width where the road passes through the territories, are still withdrawn. These illustrations of the management of railroads by the Land Department are, in fact, illustrations of the management of the Land Department by the railroads.

Another administrative abuse of railroad grants has been the frequent and unauthorized changes of location of the line fixed by the companies under the granting act. When a grant takes effect, upon the designation of a particular line, the lands withdrawn from market within the granted limits are understood to be appropriated for its use. Settlements are made and money invested with reference to the fact; but changes of location frequently take place without any authority of law, making a wide divergence from the original line. In such cases, the practice of the department has been to give the company the same land as if no change had been made, thus disregarding the action of Congress and the principle and policy of these grants. Sometimes locations have been assumed and the rights of settlers concluded on a particular line, and afterward an entirely different line has been located, on the theory that the first was preliminary only. In some of the cases the changes have been of great extent in length of the line, reaching as high as from twenty to fifty miles in breadth in Dakota, and a hundred and fifty miles and upwards in Idaho, with frequent and broad divergencies, extending from twenty-five to fifty miles in width, in Washington. In that Territory a withdrawal was made for a branch line of considerable length that was not authorized to be constructed, and to which no grant attached; and the subsequent release of this withdrawal was deemed to justify further changes, and a solid area, one hundred miles wide, remains withdrawn across the southern and central part of the Territory, with a further withdrawal of forty miles in width in Oregon, for the same distance and the same road. Changes in the line of the Northern Pacific Railway have been frequent, and very embarrassing to settlers. Under a preliminary location of the western portion of this road, in 1870, withdrawals were made in that year for forty miles on the Washington Territory side of the line, and twenty miles on the Oregon side, which latter amount was doubled two years later; and the claims of settlers who went on odd-numbered sections of public lands, between the years 1870 and 1872, within a distance of twenty miles beyond the limits of the withdrawal of 1870, have been rejected by the Land Department for the last ten years, on the ground that a reservation created in 1872 took effect two years before it was made!

It is needless to multiply these examples; but I must refer to some further facts which deserve notice. Under the present

organization of the Land Department, the Commissioner has frequently been obliged, by the pressure of his duties, to affix his signature to decisions he had never examined. In controversies between railroads and homestead or preëmption settlers, the examination of the testimony, in the first instance, is confided to ordinary clerks, who are not skilled lawyers, but very frequently men without legal knowledge or experience. The issues to be decided may turn upon difficult questions of law, and affect important public and private interests. A single case may involve millions in value. Questions of fact, to be determined upon *ex-parte* testimony, or the record of preliminary trials before local officers, are passed upon, in many instances, by men unacquainted with the rules of evidence; while it is computed that, in ninety per cent. of all the cases decided, the ruling is final. As a general rule, settlers are not able to employ competent counsel, and have to depend upon themselves and the protection of the department; while the railroad companies always have their attorneys, and of the best class. They have access to the chiefs of divisions, and their constructions of the law are generally impressed upon the minds of the clerks having the cases in charge, notwithstanding the regulations of the department prohibiting conferences between attorneys and clerks, except upon permission. In the final hearing, the corporation attorney goes in person to the General Land Office, examines the papers, and, if necessary, follows the case to the person having it in charge, and argues the superior rights of his company to the land. There are no formal hearings, and the pressure brought to bear upon clerks is the pressure of the power and influence of great corporations, which are practically unopposed; and since the adjudication, in all such cases, must depend upon the preliminary settlement of the facts, it is easy to see the helplessness of the settler. He can only get his land after the most critical examination of his case, and by meeting every technical defect in his claim; while, for thirty years, the practice has been to certify lands in bulk to railroad corporations without definite knowledge on the part of the Land Office as to whether the companies were entitled to them or not, and in utter disregard of the well-settled principle of law, that railroad grants are to be construed strictly against the grantee.

Many of the particular facts I have now recited, touching the reckless and prodigal management of the public domain, are

given on the authority of experienced land-office officials, and may be found in their sworn testimony before the Senate Committee on Public Lands of the present Congress, printed with other evidence, as a part of the report of that committee, which is numbered 362. This testimony has been sharply criticised by the railroad companies, but has not been substantially impeached. It should have the widest publicity, and deserves the serious consideration of every believer in an honest administration of public trusts. The great home department of the Government, which should be the agent and representative of the people, is rapidly becoming an appurtenance of our great railways, and a mere bureau in their service. This is not specially due to the delinquency of individual officials in the Land Department, but to a bad system. It is not the fault of the present chiefs of that department, who are new in their positions, and will have the right to be judged by their record. What is wanted is a thorough reorganization of the machinery and working force of that department, such additions to that force as shall be adequate to the work to be performed, and such an increase of compensation as will bring into the service the highest grade of capacity and integrity. No remedy can be found in simply lopping off the branches of the evils I have attempted to depict; but Congress must strike at their root, and cannot strike too vigorously or too soon. The mischief to be remedied involves the very existence of republican government. The commercial greed of great corporations, reënforced by great landed estates, threatens the subjugation of the people; and the people themselves must organize for the work of self-protection. They have no right to arraign the executive officers of the Government for succumbing to the power of great corporations, while they hold in their hands the sovereign remedy for these evils, and fail to apply it in the selection of honest and capable public servants. Nor does this duty necessitate any warfare against railroads. No one disputes their inestimable value under a just administration of their affairs, and while content to act as the servants of the public; but they are built under charters conferred by the Government, and must be resolutely subordinated to its paramount authority and the welfare of the people.

GEORGE W. JULIAN.